



## UNITED STATES DEPARTMENT OF COMMERCE

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EXAMINER

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SHAY, D

ART UNIT	PAPER NUMBER
3736	9

06/29/98

## DATE MAILED:

This is a communication from the examiner in charge of your application.  
COMMISSIONER OF PATENTS AND TRADEMARKS

This application has been examined  Responsive to communication filed on April 21, 1998  This action is made final.

A shortened statutory period for response to this action is set to expire — 3 — month(s),        days from the date of this letter.  
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

## Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

1.  Notice of References Cited by Examiner, PTO-892.
2.  Notice of Draftsman's Patent Drawing Review, PTO-948.
3.  Notice of Art Cited by Applicant, PTO-1449.
4.  Notice of Informal Patent Application, PTO-152.
5.  Information on How to Effect Drawing Changes, PTO-1474.
6.  \_\_\_\_\_

## Part II SUMMARY OF ACTION

1.  Claims 1-44 are pending in the application.

Of the above, claims 30-44 are withdrawn from consideration.

2.  Claims \_\_\_\_\_ have been cancelled.

3.  Claims \_\_\_\_\_ are allowed.

4.  Claims 1-29 are rejected.

5.  Claims \_\_\_\_\_ are objected to.

6.  Claims \_\_\_\_\_ are subject to restriction or election requirement.

7.  This application has been filed with informal drawings under 37 C.F.R. 1.85 which are acceptable for examination purposes.

8.  Formal drawings are required in response to this Office action.

9.  The corrected or substitute drawings have been received on \_\_\_\_\_. Under 37 C.F.R. 1.84 these drawings are  acceptable;  not acceptable (see explanation or Notice of Draftsman's Patent Drawing Review, PTO-948).

10.  The proposed additional or substitute sheet(s) of drawings, filed on \_\_\_\_\_, has (have) been  approved by the examiner;  disapproved by the examiner (see explanation).

11.  The proposed drawing correction, filed \_\_\_\_\_, has been  approved;  disapproved (see explanation).

12.  Acknowledgement is made of the claim for priority under 35 U.S.C. 119. The certified copy has  been received  not been received  been filed in parent application, serial no. \_\_\_\_\_; filed on \_\_\_\_\_.

13.  Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.

14.  Other

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The rejection set forth in the previous Office action are hereby repeated.

The examiner notes that both Edwards et al and Makower disclose device which require traumatic incision into tissue, this not only is the interstitial fluid inherently contained in the tissue prevent, but also blood. Even in the absence of blood, air, also a fluid, would be present.

It is further noted that requiring that the distal, portion be "configured to be positioned at ~~not provide~~ an interface between fluid medium and the selected sites" does not add additional structure to the device. Even if a further limitation were construed, the devices of Edwards et al and Makower are also so configured, since they will not be destroyed or rendered non-functional by such positioning.

Applicant's arguments filed April 21, 1998 have been fully considered but they are not persuasive.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication should be directed to David Shay at telephone number (703) 308-2215.

David Shay:bhw  
June 23, 1998



DAVID M. SHAY  
PRIMARY EXAMINER  
GROUP 330